



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Ms. Ashley Boulton, Esq.  
Downey Brand LLP  
621 Capitol Mall, 18<sup>th</sup> floor  
Sacramento, CA 95814

AUG 13 2015

Re: Freedom of Information Act Request EPA-R9-2015-008135

Dear Ms. Boulton:

This is in response to your Freedom of Information Act request, dated June 8, 2015, regarding:

1. Any and all correspondence pertaining to the State Water Resources Control Board's (SWRCB) memorandum regarding the "Withdrawal of Approval of the SWRCB Alternative Test Procedure for the Two-Concentration Test Design for NPDES Effluent Testing when using the Test of Significant Toxicity," dated May 12, 2015.
2. Any and all correspondence pertaining to the notice of withdrawal of approval of the ATP dated February 11, 2015.
3. Any and all correspondence pertaining to the United State District Court Eastern District of California's ruling in Southern California Alliance of POTWs, et al., v. United States Environmental Protection Agency, et al., Case No. 2:14-CV-01513-MCE-DAD, dated May 15 2015.
4. Any and all correspondence regarding the Test of Significant Toxicity and Chronic Toxicity.
5. Any and all correspondence with SWRCB or internally within USEPA regarding the SWRCB's draft Toxicity Policy and the proposed contents of the same.

As you know, we completed the search and review of documents concerning items 1, 2, and 3 and produced responsive documents on July 22, 2015.

In regards to items 4 and 5, for which you narrowed the scope by modifying the request to documents generated after February 11, 2015, we produced a set of responsive documents on August 6, 2015. At this time, we are producing the final set of responsive documents to close out the FOIA request.

Responsive, releasable documents and an invoice have been uploaded to EPA's FOIAOnline system found at <https://foiaonline.regulations.gov/foia/action/public/home>. To access the documents, reference your FOIA request as EPA-R9-2015-008135.

We are unable to provide you with the documents, or portions of documents, which have been determined to be exempt from mandatory disclosure by virtue of 5 U.S.C. 552(b). An itemized list by categories of the withheld material along with the basis for withholding is provided on the enclosure to this letter. This list concerns items 4 and 5 and supplements the earlier privilege log.

You may appeal this partial denial to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, DC 20460 (U.S. Postal Service Only), FAX: (202) 566-2147, E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, NW. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, DC 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination being appealed and includes the assigned FOIA request number EPA-R9-2015-008135). For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

Given that this FOIA request is related to pending litigation, please contact Marcela von Vacano of the Office of Regional Counsel at 415-972-3905 if you have any questions concerning this matter.

Sincerely,



Mike Montgomery  
Acting Division Director  
Water Division

Enclosure: Index of documents withheld

## **Freedom of Information Act Request EPA-R9-2015-008135**

### **Withheld Documents**

Below are the documents withheld in the above-referenced FOIA. The documents are identified by number and category, followed by the applicable exemption.

### **Documents Withheld in Full**

1 email from EPA Region 9 Water Division (Water Division) to EPA Region 9 Office of Regional Counsel (ORC) regarding oil and gas briefing materials, dated February 24, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

4 email chains among Water Division, ORC, Office of Water (OW), Office of General Counsel (OGC) and U.S Department of Justice (DOJ) regarding SCAP's Ninth Circuit Petition, dated February 27-April 6, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

8 email chains among Water Division, ORC, and OGC regarding SCAP's District Court litigation, dated February 9-June 5, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

2 email chains among Water Division and ORC regarding draft San Jose Creek NPDES permit testimony, dated March 9, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

2 email chains among Water Division and ORC regarding San Jose Creek NPDES permit change sheet, dated March 10, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

2 email chains among Water Division, Office of Research and Development (ORD), ORC and OGC regarding draft response to Exponent memo, dated April 9 and May 1, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

15 email chains among Water Division and ORC regarding draft California Toxicity Plan, dated February 11-May 26, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email chain among Water Division staff regarding comments on TMDL progress reports, dated April 24-April 28, 2015  
FOIA Exemption 5 (deliberative process)

1 email chain among Water Division staff and manager regarding draft California PQR Report, dated February 17-18, 2015  
FOIA Exemption 5 (deliberative process)

1 email from Water Division staff to Water Division manager regarding urban storm water pesticides report, dated April 27, 2015  
FOIA Exemption 5 (deliberative process)

1 email from Water Division Director to staff and other EPA Region 9 Division Directors regarding projects in Water Division, dated April 27, 2015  
FOIA Exemption 5 (deliberative process)

1 email chain among Water Division managers regarding ongoing Water Division projects, dated May 21, 2015  
FOIA Exemption 5 (deliberative process)

4 email chains among Water Division staff and managers regarding draft California Toxicity Plan, dated February 11-March 11, 2015  
FOIA Exemption 5 (deliberative process)

2 emails among Water Division staff and managers regarding draft California 106 Workplan, dated April 2 and 7, 2015  
FOIA Exemption 5 (deliberative process)

3 emails among Water Division staff and managers regarding current workload, dated February 25, March 16, and May 12, 2015  
FOIA Exemption 5 (deliberative process)

2 emails among Water Division staff and managers regarding coordination with State Water Resources Control Board, dated February 25 and May 26, 2015  
FOIA Exemption 5 (deliberative process)

5 emails among Water Division staff and managers regarding Los Coyotes, Terminal Island, and Saugus NPDES permits, dated April 30-May 12, 2015  
FOIA Exemption 5 (deliberative process)

8 emails among Water Division, ORD, and ORC regarding draft response to Exponent memo, March 31, 2015-May 18, 2015  
FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

6 email chains among Water Division staff and managers regarding draft Hawaii PQR report, Dated February 19-May 21, 2015  
FOIA Exemption 5 (deliberative process)

1 email among Water Division staff regarding draft San Jose Creek, Saugus and Valencia NPDES permits, dated April 6, 2015  
FOIA Exemption 5 (deliberative process)

1 email among Water Division staff and manager regarding Welch's t-test, dated March 2, 2015  
FOIA Exemption 5 (deliberative process)

1 email from Water Division staff to Deputy Regional Administrator regarding toxicity update, dated March 25, 2015  
FOIA Exemption 5 (deliberative process)

1 email among Water Division staff and manager regarding toxicity reporting, dated March 2, 2015

FOIA Exemption 5 (deliberative process)

1 email from Water Division staff to ORC and DOJ regarding Whittier Narrows NPDES permit, dated February 25, 2015

FOIA Exemption 5 (deliberative process, attorney client privilege)

1 email from Water Division staff to OW staff regarding California PQR report, dated April 15, 2015

FOIA Exemption 5 (deliberative process)

1 email among Water Division staff and manager regarding draft Padre Dam NPDES permit, dated April 8, 2015

FOIA Exemption 5 (deliberative process)

1 email among Water Division staff and managers regarding draft comment letter on RB4 non-ocean POTW permits, dated May 29, 2015

FOIA Exemption 5 (deliberative process)

1 email among Water Division staff regarding draft San Jose Creek NPDES permit and concentration response summary, dated February 26, 2015

FOIA Exemption 5 (deliberative process)

4 email chains among Water Division staff and managers regarding SCAP's District Court litigation, dated February 20-March 17, 2015

FOIA Exemption 5 (deliberative process)

1 email from ORC to Water Division regarding draft Oceanside permit, dated April 28, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email among ORC managers regarding current cases, dated February 19, 2015

FOIA Exemption 5 (deliberative process, attorney work product)

1 email from ORC to Water Division regarding contractor call, dated March 16, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

1 email between ORC staff and ORC manager regarding current cases and workload, dated April 14, 2015

FOIA Exemption 5 (deliberative process, attorney work product)

2 email chains among Water Division and ORC regarding draft San Jose Creek NPDES permit testimony, dated March 9-10, 2015

FOIA Exemption 5 (deliberative process, attorney work product)

2 email chains among ORC, Water Division and ORD regarding draft response to Exponent memo, dated May 7 and 11, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

3 email chains among ORC, Water Division and OGC regarding Whittier Narrows and Camrosa NPDES permits, dated February 25-March 2, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

3 emails among ORC and Water Division regarding SCAP's Ninth Circuit Petition, dated April 20-May 12, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

4 emails among ORC staff and ORC managers regarding draft California Toxicity Plan, dated February 23-24, 2015

FOIA Exemption 5 (deliberative process, attorney work product)

22 email chains among ORC, DOJ, OGC, Water Division and OW regarding SCAP's District Court litigation, dated February 12-June 5, 2015

FOIA Exemption 5 (deliberative process, attorney work product, attorney client privilege)

12 pages of attorney notes (Marcela von Vacano, ORC)

FOIA Exemption 5 (attorney work product)

9 pages of attorney notes (Laurie Kermish, ORC)

FOIA Exemption 5 (attorney work product)

### **Redacted Documents**

1 email chain among Water Division and California State Water Resources Control Board regarding Bay Area Urban Creeks Diazinon Toxicity, dated April 6-April 7, 2015

FOIA Exemption 5 (deliberative process)